

Remarks

This REQUEST FOR CONTINUED EXAMINATION and RESPONSE is in reply to the Office Action mailed August 29, 2006. A Petition for Extension of Time is submitted herewith, together with the appropriate fee.

I. Summary of Examiner's Rejections

Prior to the Office Action mailed August 29, 2006, Claims 48-54, 57, 59-68, 71, 73-79, 83-94, and 98-107 were pending in the Application. In the Office Action, Claims 48-54, 59-68, 73-75, 84, and 99 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman (U.S. Patent No. 5,438,508) in view of Brandt et al. (U.S. Patent No. 5,758,068). Claims 76-79, 83, 86-94, 98, and 101-105 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman. Claims 57 and 71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman in view of Brandt, and in further view of Rivera et al. (U.S. Patent No. 6,056,786). Claims 85, 100, and 106-107 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman in view of Rivera.

II. Summary of Applicant's Amendment

The present Response amends Claims 48, 57, 62, 71, 76, 91, and 106, leaving for the Examiner's present consideration Claims 48-54, 57, 59-68, 71, 73-79, 83-94, and 98-107. Reconsideration of the Application, as amended, is respectfully requested.

III. Claim Rejections under 35 U.S.C. § 103(a)

In the Office Action mailed August 29, 2006, Claims 48-54, 59-68, 73-75, 84, and 99 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman (U.S. Patent No. 5,438,508) in view of Brandt et al. (U.S. Patent No. 5,758,068, hereafter Brandt). Claims 76-79, 83, 86-94, 98, and 101-105 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman. Claims 57 and 71 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman in view of Brandt, and in further view of Rivera et al. (U.S. Patent No. 6,056,786, hereafter Rivera). Claims 85, 100, and 106-107 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wyman in view of Rivera.

Claim 48

Claim 48 has been amended by the current Response to more clearly define the embodiment of the invention therein. As amended, Claim 48 defines

48. (Currently amended) A computer network including a multi-tier licensing system comprising:

a user tier including user computers;

a remote node tier including remote nodes enabling users to run a licensed software program, at least some remote nodes allowing multiple users at multiple user computers to run the licensed software program concurrently, the remote nodes periodically producing counts of the numbers of licensed software users associated with the remote nodes; and

a master node tier including a master node periodically receiving the counts from the remote nodes and calculating a total number of licensed software users, the master node evaluating a license allocation condition using the total number of licensed software users, wherein the master node initiates a license lockout grace period if the total number of licensed software users exceeds a maximum number of licenses.

Claim 48, as currently amended, defines a computer network including a multi-tier licensing system comprising a user tier, a remote node tier, and a master node tier. The remote node tier includes remote nodes periodically producing counts of the numbers of licensed software users associated with the remote node. The master node tier includes a master node periodically receiving the counts from the remote nodes and calculating a total number of licensed software users, the master node evaluating a license allocation condition using the total number of license software users, wherein the master node initiates a license lockout grace period if the total number of license software users exceeds a maximum number of licenses. Applicant respectfully submits that these features are not disclosed or suggested by the cited references.

It is respectfully submitted that, in Wyman, the delegatee servers do not periodically produce counts of the number of licensed software users associated with it. Delegatee servers in Wyman include a product use authorization data structure for each licensed program it controls. The data structure may include a units granted field and a units available field. Each time a program in a CPU node sends a request or sends a release, the units available field is

changed, but these changes are not *periodic* because those fields can change anytime there is a request or a release by a program in a CPU node.

It is also respectfully submitted that, in Wyman, the licensing server does not periodically receive the counts from the delegatee servers because there is no mention in Wyman of the licensing server *periodically receiving counts* from the delegatee servers.

Brandt discloses a method and apparatus for software license management. The license management functionality of Brandt includes support for a grace period so that applications can be used even where there are no keys available for the application (col. 8, lines 31-35).

It appears from the above description that, in Brandt, the grace period is initiated when the total number of licensed software uses equals the maximum number of licenses. Brandt gives an example of a situation where an application, with a key that allows four users, has four users using the application, with a fifth person trying to access the application (col. 9, lines 7-9). In this case, the maximum number of licenses is 4, and the total number of licensed software uses is 4, with 1 unlicensed software use, because the fifth person invoking the application does not yet have a valid key to access the application. Without a grace period, the fifth user invoking the application would be unable to access the application, because the 4 keys were taken by the four licensed users, leaving no keys available for the fifth user. Thus, a grace period is instituted when all of the valid keys are used by an equal number of valid, licensed users in order to allow additional users without valid keys to access the application. In contrast, in the embodiment defined by Claim 48, a grace period is initiated if the total number of licensed software users exceeds a maximum number of licenses.

Furthermore, Applicant respectfully submits that, notwithstanding the comments provided above, it would not have been obvious to one of skill in the art to combine each of the cited references in the manner suggested, so as to anticipate the claimed embodiment. To establish a prima facie case of obviousness, three criteria must be met: (1) a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings; (2) a reasonable expectation of success; and (3) the prior art reference when combined must teach or suggest all the claim limitations. MPEP §2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In addition, the fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In the present instance, Applicant has not been able to find any suggestion in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, that would render the resultant combination obvious or desirable. In particular, the parties agree that Wyman does not explicitly disclose that the overdraft-limit is a grace period. In the Office Action, it was submitted that it would have been obvious to include Brandt's teaching of initiating a license lockout grace period if the total number of licensed software users exceeds a maximum number of licenses with Wyman's teaching, in order to better control licensing rights. However, Applicant has been unable to find any suggestion or desire to better control the licensing right by including a license lockout grace period if the total number of licensed software users exceeds a maximum number in the teachings of Wyman. Wyman and Brandt approach the problem of overdrafts in two different ways. Wyman institutes an additional number of licenses, while Brandt institutes a certain amount of time in which additional unlicensed users can access the application. There does not appear to be any suggestion in Wyman to also include the addition of a grace period in addition to the use of an additional number of licenses. As such, Applicant respectfully submits that the suggested combination of references lacks evidentiary support by the prior art.

In view of the above comments, Applicant respectfully submits that Claim 48, as amended, is neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claim 62

Claim 62 has been similarly amended to more clearly define the embodiment therein. For similar reasons as provided above with respect to Claim 48, Applicant respectfully submits that Claim 62, as amended, is likewise neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claim 76

Claim 76 has been amended by the current Response to more clearly define the embodiment of the invention therein. As amended, Claim 76 defines

*76. (Currently amended) A computer network including a multi-tier licensing system comprising:
a user tier including user computers;*

a remote node tier including remote nodes enabling users to run a licensed software program, at least some remote nodes allowing multiple users at multiple user computers to run the licensed software program concurrently, the remote nodes periodically producing indications of the software usage of the licensed software program by users associated with the remote nodes; and

a master node tier including a master node periodically receiving the indications from the remote nodes and calculating a total number of licensed software users, the master node evaluating a license allocation condition using the total number of licensed software users, wherein a sanity scan checking processes running on the remote nodes is done on at least one subset of the remote nodes, where a scan result message is sent from the remote nodes to the master node with at least some of the indications if the sanity scan was successful, the master node checks whether the scan result messages has been received from all of the remote nodes and deallocates any licenses allocated to users of any of the remote nodes from which a scan result message has not been received.

Claim 76, as currently amended, defines a computer network including a multi-tier licensing system comprising a user tier, a remote node tier, and a master node tier. The remote node tier includes remote nodes periodically producing indications of the software usage of the licensed software program by users associated with the remote nodes. The master node tier includes a master node periodically receiving the indications from the remote nodes and calculating a total number of licensed software users, the master node evaluating a license allocation condition using the total number of license software users, wherein a sanity scan checking processes running on the remote node is done on at least one subset of the remote nodes. A scan result message is sent from the remote node to the master node with at least some of the indications if the sanity scan was successful. The master node checks whether the scan result messages has been received from all of the remote nodes and deallocates any licenses allocated to users of any of the remote nodes from which a scan result message has not been received. Applicant respectfully submits that these features are not disclosed or suggested by the cited references.

As discussed above, for similar reasons as provided above with respect to Claim 48, it is respectfully submitted that, in Wyman the delegatee servers do not periodically produce indications of the software usage of the licensed software program by users associated with the

remove nodes, and that the licensing server does not periodically receive the indications from the remote nodes.

It is also respectfully that, in Wyman, the licensing server does not perform a sanity scan. The Office Action dated August 29, 2006 cites column 23, lines 38-50 of Wyman as disclosing wherein a sanity scan is done on at least one subset of the remote nodes. Column 23, lines 38-50 of Wyman describes the actions of the licensing server or the delegatee server in executing the license management program as it waits for actions by client nodes. The licensing (or the delegatee) server loops while it waits for receipt of a request, release or query call from client nodes. Depending on the type of call, the server receives the call, checks for errors, and performs the appropriate license unit allocation functions. It is respectfully submitted that the actions disclosed in column 23, lines 38-50 of Wyman is not a sanity scan. Rather, the actions disclosed are the servers looping while waiting for message from client nodes. Claim 76 has also been amended so that a sanity scan checking processes running on the remote nodes is done on at least one subset of the remote nodes.

It is also respectfully submitted that, in Wyman, no scan result messages are sent to the licensing server *if the sanity scan was successful*. While the licensing server and the delegatee servers both maintain logs recording usage activity of user CPUs of each of the licensed programs, there is no mention of any scan result messages sent to the licensing server *if the sanity scan was successful* with at least some of the indications.

It is also respectfully submitted that, in Wyman, the master node does not deallocate any licenses allocated to users of any of the remote nodes from which a scan result message has not been received. The Office Action cites column 15, lines 38-40 and column 16, line 51 to column 17, line 2 of Wyman as disclosing the master deallocating any licenses allocated to users of any of the nodes from which a scan result message has not been received. Column 15, lines 38-40 of Wyman describes the situation where a CPU node has finished running and the allocated license unit for that CPU node are deallocated and made available to other instances of the software product. Column 16, line 51 to column 17, line 2 of Wyman discloses that if a process running on a user node abnormally terminates, it will be treated as a license release, and license units allocated to the process will be deallocated and returned to the pool of available units. It appears that, in Wyman, units are deallocated upon receipt of a license release that carries an error status or upon receipt of an indication that a process has abnormally terminated, so there has to be some kind of indication of a release or an error that is sent to the licensing server before license units are deallocated. In contrast, in the embodiment

claimed in Claim 76, the master node deallocates licenses to users of any of the remote nodes from which a scan result message *has not been received*.

In view of the above comments, Applicant respectfully submits that Claim 76, as amended, is neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claim 91

Claim 91 has been similarly amended to more clearly define the embodiment therein. For similar reasons as provided above with respect to Claim 76, Applicant respectfully submits that Claim 91, as amended, is likewise neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claim 106

Claim 106 has been amended by the current Response to more clearly define the embodiment of the invention therein. As amended, Claim 106 defines

106. (Currently amended) A computer network including a multi-tier licensing system comprising:

a user tier including user computers;

a remote node tier including remote nodes enabling users to run a licensed software program, at least some remote nodes allowing multiple users at multiple user computers to run the licensed software program concurrently, the remote nodes periodically producing counts of the numbers of licensed software users associated with the remote nodes; and

a master node tier including a master node periodically receiving the counts from the remote nodes and calculating a total number of licensed software users, the master node evaluating a license allocation condition using the total number of licensed software users, wherein the master node sends a warning message if the total number of licensed software users exceeds a limit that is less than the maximum number of licenses.

Claim 106 has been amended to more clearly define the embodiment as comprising a remote node tier including remote nodes that periodically produce counts of the number of licensed software users associated with the remote nodes, and a master node tier that

periodically receives the counts from the remote nodes. The master node sends a warning message if the total number of licensed software users exceeds a limit that is less than the maximum number of licenses. Applicant respectfully submits that these features are neither disclosed nor suggested by the cited references.

As discussed above, for similar reasons as provided above with respect to Claim 48, it is respectfully submitted that, in Wyman the delegatee servers do not periodically produce counts of the number of licensed software users associated with it, and that the licensing server does not periodically receive the counts from the delegatee servers.

Rivera discloses a technique for determining the number of users or client computers which transact with a server program during a given period of time (Abstract). Audit logs are used to determine the number of unique client entities that initiated transactions with the server program during a particular time interval (col. 6, lines 42-45). Using a license monitoring routine associated with the server program, the audit log that can be reviewed to determine client license compliance (col. 6, lines 58-60). If the routine determines that the number of users or client computers transacting with the server program is less than the number of client licenses available, the routine stops running because there is a sufficient number of licenses (col. 8, lines 35-39). However, if the number of client computers exceeds the number of client licenses, the routine informs the administrator that the number of licenses purchased is insufficient (col. 8, lines 39-43). The administrator can be warned repeatedly until a sufficient number of licenses has been purchased, or the routine can lock up the server program until the requisite additional licenses have been purchased (col. 8, line 48 to col. 9, line 2).

It appears from the above description that, in Rivera, a warning is triggered by the license monitoring routine *only when the number of client computers exceeds the number of client licenses*. If the number of client computers is less than the number of client licenses, the routine stops running and no warnings are triggered. Thus, Rivera does not teach the triggering of a warning when the number of client computers exceeds any predetermined value based on design needs. Thus, it would not have been obvious to one of skill in the art for the master node to send a warning message if the total number of licensed software users exceeds a limit that is less than the maximum number of licenses because Rivera explicitly teaches that the license monitoring routine stops and sends no warnings if the number of client computers is less than the number of client licenses. As such, Applicant respectfully submits that suggested modification of Rivera lacks evidentiary support by the prior art.

Furthermore, Applicant respectfully submits that, notwithstanding the comments provided above, it would not have been obvious to one of skill in the art to combine each of the

cited references in the manner suggested, so as to anticipate the claimed embodiment. In the present instance, Applicant has not been able to find any suggestion in the cited references themselves or in the knowledge generally available to one of ordinary skill in the art, that would render the resultant combination obvious or desirable. In particular, it appears the parties agree that Wyman does not explicitly disclose the master node sending a warning message if the total number of licensed software users exceeds a limit that is less than the maximum number of licenses. In the Office Action, it was submitted that it would have been obvious to include Rivera's modified teaching of sending a warning message if the total number of licensed software users exceeds a predetermined value for alerting the over-usage of licenses, wherein the predetermined value is based on design needs, with Wyman's teaching, in order to allow the master node in Wyman's teaching to send a warning message if the total number of licensed software users exceeds a predetermined value for alerting the over-usage of licenses, wherein the predetermined value is based on design needs. However, Applicant has been unable to find any suggestion or desire to include sending a warning message if the total number of licensed software users exceeds a predetermined value for alerting the over-usage of licenses, wherein the predetermined value is based on design needs, in the teachings of Wyman. As such, Applicant respectfully submits that the suggested combination of references lacks evidentiary support by the prior art.

In view of the above comments, Applicant respectfully submits that Claim 106, as amended, is neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

Claims 49-54, 57, 59-61, 63-68, 71, 73-75, 77-79, 83-90, 92-94, 98-105, and 107

Claims 49-54, 57, 59-61, 63-68, 71, 73-75, 77-79, 83-90, 92-94, 98-105, and 107 are not addressed separately, but it is respectfully submitted that these claims are allowable as depending from an allowable independent claim, and further in view of the comments provided above. Applicant respectfully submits that these claims are similarly neither anticipated by, nor obvious in view of the cited references, and reconsideration thereof is respectfully requested.

It is also submitted that these claims also add their own limitations which render them patentable in their own right. Applicant respectfully reserves the right to argue these limitations should it become necessary in the future.

IV. Conclusion

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and reconsideration thereof is respectfully requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including February 28, 2007.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: February 28, 2007

By: /Guanyao Cheng/
Guanyao Cheng
Reg. No. 58,555

FLIESLER MEYER LLP
650 California Street, Fourteenth Floor
San Francisco, California 94108
Telephone: (415) 362-3800